IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 8378 of 2005

Between:

Md. Hasan S/o. Md. Abbasali
R/o. 2-4-2, Thorrur, Warangal District.

..... PETITIONER

AND

1 APSRTC, Rep. by its Managing Director, Musheerabad, Hyderabad.
2 The Depot Manager, APSRTC, Bus Depot, Thorrur, Warangal District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or direction particularly one in the nature of WRIT OF CERTIORARI, quash the impugned order of removal from service vide Proc.No. 03/209(1)/2004-TRR dt. 21-3-2005 as illegal, unjust, arbitrary, in violation of Art. 14, 16 & 21 of the Constitution of India and consequently direct the respondents to reinstate the petitioner into service along with all consequential benefits including back wages.

Counsel for the Petitioner:MR.V.NARASIMHA GOUD

Counsel for the Respondent Nos.1 and 2 : SMT.P.RAJANI REDDY

The Court at the admission stage made the following O R D E R:

The petitioner filed this writ petition to quash the impugned order dated 21.03.2005 and consequently to direct the respondents to reinstate the petitioner into service.

The petitioner joined as driver in the respondent-Corporation through due process of selection. Through proceedings dated 24.11.2004, the petitioner was charge sheeted alleging certain irregularities and placed him under suspension. Thereafter, the petitioner submitted his explanation denying the charges levelled against him. The second respondent passed the final order on 21.03.2005 imposing the punishment of removal from service. Hence this writ petition.

Firstly, it was contended by the learned counsel for the petitioner that the complainant who lodged the report was not examined in the preliminary enquiry or in the domestic enquiry. Secondly, he contended that framing of charge itself would indicate that the authorities have come to a predetermined conclusion and there is no positive evidence. Thirdly, he contended that the explanation of the petitioner was not considered and the enquiry was biased. Therefore, he prays to quash the impugned proceedings. In support of his contentions, he relied on the following judgments:

In **Kuldeep Singh v. Commissioner of Police**, it is held that apart from the above, Rule 16(3) has to be considered in the light of the provisions contained in Article 311(2) of the Constitution to find out whether it purports to provide reasonable opportunity of hearing to the delinquent. Reasonable opportunity contemplated by

Article 311(2) means “hearing” in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of that statement should first be supplied to the delinquent who should thereafter be given an opportunity to cross-examine that witness.

In **Hadrwari Lal v. State of U.P**., the Supreme Court observed as follows:

“However, Shri Goel, the learned Additional Advocate General, State of Uttar Pradesh has submitted that there was other material which was sufficient to come to the conclusion one way or the other and he has taken us through the same. But while appreciating the evidence on record, the impact of the testimony of the complainant cannot be visualized. Similarly, the evidence of Jagdish Ram would also bear upon the state of inebriation, if any, of the appellant.”

The Supreme Court in **State of W.B. v. Shivananda Pathak**, held that bias may be defined as a preconceived opinion or a predisposition or predetermination to decide a case or an issue in a particular manner, so much so that such predisposition does not leave the mind open to conviction. It is, in fact, a condition of mind, which sways judgments and renders the judge unable to exercise impartiality in a particular case.

In **K.David Wilson v. Secretary to Government, Law Department**, it is held that the enquiry conducted against the petitioner also suffers from anther serious procedural flaw. The statement of the stenographer recorded by the learned District Judge, West Godavari District in the course of preliminary enquiry was treated as substantive evidence in the regular enquiry without examining the stenographer and marking the statement given by him in the preliminary enquiry and without giving any opportunity to the petitioner to cross-examine the stenographer. This procedure adopted by the Enquiry Officer is clearly objectionable and in violation of principles of natural justice.

Relying on the above judgments, learned counsel for the petitioner

contended that the order under challenge suffers from legal infirmities so as to call for interference of this Court.

Learned standing counsel appearing for the respondents contended that even though the complainant was not examined, there is sufficient evidence against the petitioner.

Admittedly, a statutory appeal lies to the Divisional Manager against the order of the Depot Manager, second respondent. In the aforesaid decisions relied on by the learned counsel for the petitioner, the petitioners therein filed the writ petitions after exhausting alternative remedies. There cannot be any restriction to avail the alternative remedy of preferring an appeal. But, there is no bar for filing writ petitions under any of the following circumstances:

i. when the principles of natural justice are violated; or

ii. when the fundamental rights are infringed; or

iii. when the authority who passed the impugned proceedings has no jurisdiction.

The case of the petitioner does not fall under any of the above circumstances. Hence, the writ petition is dismissed with liberty to file a statutory appeal before the Divisional Manager. However, the petitioner is at liberty to raise all the contentions before the appellate authority, which are available to him under law.

Accordingly, the writ petition is dismissed at the stage of admission. No costs.

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(K.C.BHANU,J)

Dt:15th April, 2005

usd

To

1 APSRTC, Rep. by its Managing Director, Musheerabad, Hyderabad.
2 The Depot Manager, APSRTC, Bus Depot, Thorrur, Warangal District.

3 2 CD copies

4 1 CC to MR.NARASIMHA GOUD (On usual charges)

*Form-NIC-OGS/WP{**VSMI**}*